

**MAGISTRATE JUDGE'S MINUTES
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA – PHOENIX**

U.S. Magistrate Judge: Deborah M. Fine

Date: December 29, 2021

USA v. David Allen Harbour

Case Number: CR-19-00898-001-PHX-DLR

Assistant U.S. Attorney: Kevin M. Rapp, Coleen Schoch (telephonically)

Attorney for Defendant: Ashley Adams, Retained

Other Appearances: *Telephonic* - Jack Edwards (counsel for victim RG); Gerald Krovatin (counsel for movant Philip Burgess); Pretrial Services Officer Gretchen White; *Present in courtroom* - PTS Officer Justin Lauby; Andrew Pacheco (counsel for witness Kenneth Bobrow); Special Agent Brandon Lopez; Defense paralegal Rosemary Washburn

Defendant: Present (VTC) Not Present Released Custody Summons Writ

PRETRIAL RELEASE REVOCATION/DETENTION HEARING:

1:06 p.m. This is the time set for Pretrial Release Revocation Hearing and Detention Hearing. Defendant consents to his VTC appearance and waives his right to be physically present for these proceedings. The Court finds that it is in the interest of justice and for the safety of participants that Defendant appear for today's proceedings by video teleconference ("VTC").

Hearing protocol discussed.

Defense counsel objects to Government's witness Special Agent Troy Cofer testifying as to any hearsay statements made by Kenneth Bobrow. Discussion held. The Court determines that Ms. Adams' objection is premature and may be reasserted, if necessary, at the time of Agent Cofer's testimony.

Discussion held regarding the United States' *Ex Parte* Petition to Revoke Defendant Harbour's Release Pending Trial and to Issue an Arrest Warrant, (Doc. 267). The Court advises that the purpose of this hearing is to independently determine whether there is probable cause that Defendant violated his conditions of pretrial release due to witness tampering. The Court is not bound by Judge Rayes' initial determination to issue the petition to revoke, and the parties are not precluded from appealing this Court's decision to Judge Rayes. Discussion held regarding a clarification of the remaining allegations in the supplemental petition filed by the Government (Doc. 290).

Government invokes the Rule of Exclusion of Witnesses. All witnesses who intend to testify are excused from the courtroom. Andrew Pacheco, counsel for witness Mr. Bobrow, remains in the courtroom.

Government's witness, Special Agent Troy Cofer, is sworn. Defense counsel renews objection to any testimony regarding Mr. Bobrow's statements. Mr. Pacheco advises the Court that under the advice of counsel, Mr. Bobrow intends to invoke his Fifth Amendment right against self-incrimination. Discussion held. For reasons stated on the record,

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IT IS ORDERED that Defendant's objection to the testimony of Special Agent Cofer regarding statements made by Mr. Bobrow is overruled.

Special Agent Cofer is examined. Government's Exhibits 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 16, 17, 18, 20 and 25 are admitted in evidence.

IT IS FURTHER ORDERED that the Government shall provide opposing counsel with the investigative report of Victoria Bobrow's interview once it is finalized.

Discussion held regarding defense witness appearances. Upon the request of defense counsel, and in light of Mr. Bobrow's intention to assert his Fifth Amendment rights, the Court excuses Mr. Bobrow from the defense subpoena for testimony. Accordingly, Mr. Pacheco is excused. As to Defendant's remaining witness, Bart Shea, the Court is inclined to order Mr. Shea to consult with counsel prior to testifying in this matter. Defense counsel is directed to confer with Mr. Shea during recess regarding the Court's intention.

3:13 p.m. Court stands at recess.

3:31 p.m. Court reconvenes. The Court advises the parties that it will not hear testimony from Mr. Shea until he has had an opportunity to confer with counsel and will set a date for a continuation of this hearing in order for him to testify. Special Agent Cofer is further examined. Government's Exhibits 22 and 24, and Defendant's Exhibits 1, 7, and 52 are admitted into evidence. Government's objections to Defendant's Exhibits 3, 4, and 6 are overruled. Defendant's Exhibits 3, 4, and 6 are admitted.

Mr. Shea enters the courtroom and is advised by the Court that he is directed to consult with an attorney prior to testifying. Mr. Shea avows that he has the means to hire an attorney. The Court advises that Mr. Shea is not yet released from his subpoena and must return to the Court at the continuation of this hearing set for **Tuesday, January 18, 2022, at 2:15 p.m.**, in Courtroom 304. Mr. Shea is excused for the day.

Special Agent Cofer is further examined. Discussion is held regarding attorney-privilege. Defense counsel withdraws Defendant's Exhibits 43 and 44. Government's Exhibit 19 is admitted into evidence. The Court will admit Defendant's Exhibits 8, 9, 10, and 11, solely as authenticated and not for purposes of the truth of the statements therein. Defendant's Exhibit 13 is admitted.

5:11 p.m. The Court stands at recess until January 18, 2022 at 2:15 p.m., and for reasons stated on the record, denies defense counsel's request to release Defendant. Defendant shall remain detained pending the continuation of this hearing.

Court Reporter Elaine Cropper
Deputy Clerk Rebekka Walder

3 hrs 47 mins
Start: 1:06 PM
Stop: 5:11 PM